APPENDIX

STATUTES

Patent Act of 1793.

1 Statutes at Large, 318.

An Act to promote the progress of useful Arts; and to repeal the act heretofore made for that purpose.

§ 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That when any person or persons, being a citizen or citizens of the United States, shall allege that he or they have invented any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement on any art, machine, manufacture or composition of matter, not known or used before the application, and shall present a petition to the Secretary of State, signifying a desire of obtaining an exclusive property in the same, and praying that a patent may be granted therefor, it shall and may be lawful for the said Secretary of State, to cause Letters Patent to be made out in the name of the United States, bearing teste by the President of the United States, * * *.

Patent Act of 1836.

5 Statutes at Large, 117, 119

§ 6. *And be it further enacted,* That any person or persons having discovered or invented any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement on any art, machine, manufacture, or composition of matter, not known or used by others before his or their discovery or invention thereof, and not, at the time of his application for a patent, in pub-

lic use or on sale, with his consent or allowance, as the inventor or discoverer; and shall desire to obtain an exclusive property therein, may make application in writing to the Commissioner of Patents, expressing such desire, and the Commissioner, on due proceedings had, may grant a patent therefor. * * *

PATENT ACT OF 1839.

5 Statutes at Large, 353, 354

An Act in addition to "An act to promote the progress of the useful arts."

§ 7. *And be it further enacted,* That every person or corporation who has, or shall have, purchased or constructed any newly invented machine, manufacture, or composition of matter, prior to the application by the inventor or discoverer for a patent, shall be held to possess the right to use, and vend to others to be used, the specific machine, manufacture, or composition of matter so made or purchased, without liability therefore to the inventor, or any other person interested in such invention; and no patent shall be held to be invalid by reason of such purchase, sale, or use prior to the application for a patent as aforesaid, except on proof of abandonment of such invention to the public; or that such purchase, sale, or prior use has been for more than two years prior to such application for a patent.

CONSOLIDATED PATENT ACT OF 1870.

16 Statutes at Large, 198, 201

An Act to revise, consolidate, and amend the Statutes relating to Patents and Copyrights.

§ 24. *And be it further enacted,* That any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new

and useful improvement thereof, not known or used by others in this country, and not patented, or described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the duty required by law, and other due proceedings had, obtain a patent therefor.

THE REVISED STATUTES.

(As Approved June 22, 1874.)

Relating to Patents.

§ 4886. Any person who has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon the payment of the fees required by law, and other due proceedings had, obtain a patent therefor.

PATENT ACT OF 1897.

29 Statutes at Large, 692

An Act Revising and amending the statutes relating to patents.

"§ 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any

foreign country, before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor."

REDUCING PUBLIC USE PERIOD TO ONE YEAR

(Public—No. 286—76th Congress)
(Chapter 450—1st Session)

(H.R. 6872)

AN ACT

To amend sections 4886, 4887, 4920, and 4929 of the Revised Statutes (U. S. C., title 35, secs. 31, 32, 69 and 73).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 4886, 4887, 4920, and 4929 of the Revised Statutes (U. S. C., title 35, secs. 31, 32, 69, and 73) be amended by striking out the words "two years" wherever they appear in said sections and substituting therefor the words "one year".

§ 4886 (35 USC 31) Inventions patentable

Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or who has invented or discovered and asexually reproduced any distinct and new variety of plant, other than a tuber-propagated plant, not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than one year prior to his application, and not in public use or on sale in this country

for more than one year prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor.

EXCERPTS FROM CONGRESSIONAL RECORDS

The Congressional Globe

April 14, 1870 page 2683, col. 1

Mr. Jenckes. "These are the amendments to the law of patents. There are not new nor additional provisions except in the case of the payment of the fee during the term of the patent, to keep it alive. In other respects the law stands without any other change than that it is enlarged, defined, made clear in its terms and provisions and in its proposed execution, so that the remedies can be pursued without mistake and with effect."

The Congressional Globe

April 21, 1870 pages 2875, 2876, cols. 3, 1

Mr. Myers. "A word, now, to my friend from Massachusetts, (Mr. Butler,) who objects to that section of the bill which limits the time, or creates a statute of limitations in regard to abandonment of applications. Mr. Speaker, a man may originate an invention and keep it within his own breast, and may apply for a patent when he pleases, and obtain it, unless he allows it to go into public use for two years, or delays till another applies for and obtains a patent. The law is not altered in this respect. We have no control over that which is not made known. When the secret is disclosed it may be as valuable as when the idea was first conceived and perfected, and we do not propose to interfere with the law in this respect; but after a man once applies for a patent and is rejected, or withdraws his application, or fails to pros-

ecute it, there should be a limit of time in which he can keep his claim alive. This is in the interest of true invention and against the policy of litigation * * *."

THE CONGRESSIONAL GLOBE

April 21, 1870 page 2879, col. 1

MR. JENCKES. "Without this protection we should return to the era of 'secrets,' when every valuable discovery was carefully guarded by its possessor, or parted with only upon terms which required the purchaser to be equally silent and uncommunicative. The public obtained no useful knowledge of the art and but a limited advantage from the working of the discovery. The evil consequences of that system were twofold. The knowledge of many valuable inventions and discoveries died with their possessors and are now among the lost arts; on the other hand, empirical processes of fictitious value were imposed upon manufacturers under the guise of 'secrets' in the arts, and the whole subject of invention and the character of inventors became discredited and debased. The injury to the progress of the useful arts by these pretended secrets has been greater a thousandfold than any that has arisen from the abuse of even the most imperfect system of patent laws."

THE CONGRESSIONAL GLOBE

June 24, 1870 page 4821, col. 2

THE PRESIDING OFFICER. "The next amendment was in section sixty-one, line twenty-six, to strike out the words 'with his consent;' so that the clause will read:

> "Fifth. That it had been in public use or on sale in this country for more than two years before his application for a patent, or had been abandoned to the public.
>
> "The amendment was agreed to."

H. R. 1714.

t CONGRESS,
2D SESSION.

IN THE HOUSE OF REPRESENTATIVES.

APRIL 7, 1870.

d twice, ordered to be printed, and recommitted to the Committee on Patents. Strike out the parts within [brackets] and insert the parts in *italics*.

JENCKES, from the Committee on Patents, reported the following bill:

A BILL

o revise, consolidate, and amend the statutes relating to patents and copyrights.

What may be patented.

4 July, 1836, ch. 357, §§ 6, 7, v. 5, pp. 119, 120
3 Mar., 1839, ch. 88, § 7, v. 5, p. 354.
29 Aug., 1842, ch. 263 § 3, v. 5, pp. 543, 544.
2 Mar., 1861, ch. 88 § 11, v. 12, p. 248.

SEC. [23.] 24. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, [before his invention or discovery thereof, and not at the time,] *and not* patented, or described in any printed publication in this or any foreign country, [nor] *before his invention or discovery thereof, and not* in public use or on sale [with his consent] for more than two years prior to his application, [or except] *unless* the same is proved to have been abandoned, may, upon payment of the duty required by law, and other due proceedings had, obtain a patent therefor.

Pet. C. C., 341, 400.
4 Wash., 12.
1 How., 208.
15 How., 267.
10 How., 496.
1 Gall., 480.
3 Wheat., 516.
2 Story, 411.
15 How., 267.
11 How., 265.
14 How., 175.
2 Wall, jr., 360.
3 Sumn., 518.
Brightley, 99.
4 McLean, 180, 461.
4 Wash., 52.
1 Blatch., 248, 463, 494
1 Wash., 171.
3 Wash., 198.
1 Gall., 439, 479.
2 Gall., 53.

et. C. C., 342. 1 Mass., 476. 7 Wheat., 430. 4 Mass., 7. Bald., 2 McLean, 178. 5 McLean, 88. 2 Blatchf., 200, 237, 243, 278. enn., 352. 1 Curt., 293. 15 How., 122. 6 McLean, 347, 561. mn., 487. 2 Story, 194, 411. 1 Story, 281, 597. 4 How., 2 Wood. & Min., 143. 2 Curt., 555. 21 How., 329.

sed the House of Representatives
April 21, 1870.

est: EDWARD McPHERSON, *Clerk.*
By CLINTON LLOYD, *Chief Clerk.*

H. R. 11019

72D CONGRESS
1ST SESSION

IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 1932

Mr. Kelly of Illinois introduced the following bill; which was referred to the Committee on Patents and ordered to be printed.

A BILL

To limit inventors to priority of two years before filing applications for patent.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4886 of the Revised Statutes (U. S. C., title 35, sec. 31) be, and the same is hereby, amended to read as follows:

"Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or who has invented or discovered and asexually reproduced any distinct and new variety of plant, other than a tuber-propagated plant, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law and other due proceeding had, obtain a patent therefor.

"If in any proceeding involving an application for patent, or in any suit in law or in equity involving an application for patent or a right arising out of the grant of a patent thereon, there shall be submitted satisfactory proof of invention or discovery by such applicant or patentee of the subject matter patented or sought to be patented at a date more than two years before the filing of the earliest application for patent upon which such applicant or patentee may rely for constructive reduction to practice of the invention, such proof shall be held to establish invention or discovery no more than two years prior to the filing of such earliest application: *Provided, however,* That there shall be excepted from the operation of the foregoing provisions all patents heretofore granted, all applications heretofore filed, all applications filed after the passage of this Act wherein the applicant is entitled to rely for constructive reduction to practice upon an application heretofore filed, as well as patents granted on any such applications."

Hearings before the House Committee on Patents, March 30 and 31, 1932 (page 93)

MR. EMERY. "The bill offered by Mr. Kelly to limit inventors to priority of two years before filing applications for patents, the Boston Patent Law Association is strongly opposed to, because it shuts off the applicant from carrying his invention back to a very short time.

THE CHAIRMAN. "How many years would you grant, Mr. Emery?

MR. EMERY. "I would grant him whatever is necessary.

THE CHAIRMAN. "Wait a minute. I am asking you a specific question.

MR. EMERY. "Whatever number of years was necessary to permit him to show the true facts as to his invention. Now, if your honor please, this touches upon something that is going to work to the commissioner's disad-

vantage and to the applicant's disadvantage rather than to his advantage. We have always been taught to believe, and the courts have encouraged, applicants waiting until their inventions were in really definite shape and fairly well worked out before filing their applications for letters patent. If you are going to prevent them from going more than two years back of their filing date to establish inventions, you are going to make it necessary for inventors, rich and poor alike, to rush into the Patent Office in many instances before their inventions are matured or reduced to anything like practical, commercial form; and that means that applications will be immature, incomplete, unsatisfactory; and means that an applicant must file a second or perhaps a third application later on in order to protect his invention, and that would put an additional burden on the Patent Office * * *."

(Page 104)

MR. ROBERTSON. "When you take a poor inventor who has made different inventions, and has great difficulty in getting the wherewithal to file applications on one of those —it takes all of the resources that he has to get one or two of them, and he has four or five inventions—that man may be precluded from having a patent which he would otherwise be entitled to, and he is the one on whom this bill would rest."

Hearing before the Committee on Patents on
H.R. 23417 April 26, 1912 (page 29)

MR. BAEKELAND. "* * * When an inventor asks me whether he shall take out a patent in the United States I tell him, 'Have you got the money to maintain your rights and to defend them in case of infringement? If not, do not lose any time or any money in taking out a patent; keep the matter secret.' I did so myself. My first successful invention here in this country was a new photo-

graphic process, called 'Vellox' paper. At that time I was not rich enough to take out a patent and to defend it at the same time. So I knew that my competitors would have swamped me by infringing the patent, and there would have been very little chance of my defending my rights. So I practiced it secretly, and after I made business a success, then I sold out to a large corporation at my terms. Later on——

THE CHAIRMAN. "That was after you got a patent.

MR. BAEKELAND. "I never got a patent for that. The process is still a secret process.

"As to my other inventions, I patented most of them, because I felt I was in a better position to defend my rights. From my personal standpoint, since I am in a position to defend my rights, I feel that I have the benefit of that condition of affairs which enables me to keep out competitors. I am speaking very frankly on that subject, so as to impress you with the idea that if I am saying anything here I am animated by personal motive."

STATEMENT OF COMMISSIONER OF PATENTS
CONWAY P. COE

Before the Temporary National Economic Committee
January 16, 1939 (page 107)

"Now it takes him a year, we will say, from that time of his first reduction to practice in the development of the commercial form, to where it can be actually put on the market and sold and be of some benefit to the public. The present statutes than give him two full years in which to publicly use the invention before the application is filed, and so we have here four years that have now elapsed before the application is even brought into the Patent Office.

"The next three years are taken up in the prosecution of the application. Three years have been generally re-

garded as a rather liberal period for the prosecution of most patent applications. The prosecution having been concluded and the patent issued at this point, then the patent life runs for seventeen years and expires at the right-hand end of the chart."

(Pages 112, 113)

"* * * When a patent issues to an inventor we purport to give him the right, the exclusive right, for a term of seventeen years to prevent others from making, using or selling the invention covered by it. But we say that with our tongue in our cheek, for we know better than he that by our present method of adjudicating patent rights he will find it exceedingly difficult to prevent the wrongful appropriation of his property and may be compelled to stand helpless while he is despoiled. As you are aware, if the inventor undertakes to invoke the law for his protection he must file suit in a United States District Court. If the decision of that court be objectionable to him or to the other party, the case must be taken to one of the ten Circuit Courts of Appeals. This in itself is a heavy financial burden, but one which, perhaps most inventors could bear with their own means or the help of others. But having taken this appeal, what has he gained? Hardly more than a ruling as to his rights in that particular circuit. He must then, at least theoretically, go from one to another of all the other circuits, and if purchance from these many litigations there come conflicting decisions, he has the privilege—if he still has the wherewithal—to carry his case to the United States Supreme Court.

"My conviction is that the poor inventor, and through him the public, suffers injustice precisely for the reason and to the extent that the monopoly, the exclusive right, purportedly bestowed on him is not now fully safeguarded."